

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B01

PLR-104318-15

Date:

July 28, 2015

Legend

Taxpayer =

LLC =

Country X Entity =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year A =

Dear :

This replies to a letter dated January 15, 2015 from your authorized representative, in which you request an extension of time pursuant to Treas. Reg. §§ 301.9100-1(c) and 301.9100-3 to file a Form 8848 (*Consent to Extend Time to Assess the Branch Profits Tax under Regulations Sections 1.884-2T(a) and (c)*).

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Taxpayer, a Country X Entity, was an eligible entity that, pursuant to Treas. Reg. § 301.7701-3(b)(2), was classified as an association taxable as a corporation for U.S. tax purposes. All of the Taxpayer's shareholders were foreign individuals. As of the beginning of Year A, Taxpayer held interests in a domestic limited liability company (LLC) that was classified as a partnership for U.S. tax purposes. LLC, in turn, owned a "U.S. real property interest" within the meaning of section 897(c) of the Code.

On Date 1 of Year A, LLC sold its U.S. real property interest at a gain. Pursuant to section 897(a), Taxpayer's distributive share of such gain is treated as effectively connected income under section 882(a). Pursuant to Treas. Reg. § 1.1446-3(c), LLC withheld 35 percent income tax under section 1446 on Taxpayer's allocable share of that gain.

Taxpayer filed a Form 8832 (*Entity Classification Election*) to elect to be classified as a partnership under Treas. Reg. § 301.7701-3 effective on Date 3. Pursuant to Treas. Reg. § 301.7701-3(g)(1)(ii), as a consequence of the election, Taxpayer was deemed to have distributed all of its assets and liabilities to its shareholders in liquidation, and immediately thereafter, the individual shareholders were deemed to have contributed all of the distributed assets and liabilities to a newly formed partnership. Pursuant to Treas. Reg. § 301.7701-3(g)(3)(i), the Taxpayer's deemed liquidation occurred immediately before the close of Date 2 (i.e., the day before the Date 3 entity classification election effective date). Date 2 accordingly was the last day of its fiscal year.

Taxpayer's return preparer was unaware that the failure to file Form 8848 as an attachment to the Taxpayer's Form 1120F (*U.S. Income Tax Return of a Foreign Corporation*) for Year A on or before the return's due date (including extensions) in accordance with Treas. Reg. § 1.884-2T(a)(2)(i)(D) and Treas. Reg. § 1.884-2(a)(2)(ii) rendered unavailable the complete termination exception to the branch profits tax under Treas. Reg. § 1.884-2T.

Pursuant to the advice of legal counsel, Taxpayer subsequently filed its Form 1120F for Year A with an attached Form 8848 on Date 4, a date within 18 months of the return's due date, and included a disclosure statement informing the Service that it would be seeking relief for its untimely filing of Form 8848 under Treas. Reg. §§ 301.9100-1(c) and 301.9100-3. Taxpayer now requests that relief.

Taxpayer represents, as required by Treas. Reg. § 1.884-2T(a)(2):

(1) As of the close of Date 2, Taxpayer held no U.S. assets.

(2) Neither Taxpayer nor a related corporation (within the meaning of Treas. Reg. § 1.884-2T(a)(2)(iv)) has used or will use, directly or indirectly, in the conduct of a trade or business in the United States at any time during the three-year period following Date 2 of Year A: (a) any of the U.S. assets of the terminated U.S. trade or business; (b) any property attributable to those assets; or (c) any property attributable to effectively connected earnings and profits of Taxpayer for Year A.

(3) Taxpayer did not have and will not have any income that is, or is treated as, effectively connected income during the three-year period following Date 2.

Treas. Reg. § 1.884-2(a)(2)(ii) provides that the waiver referred to in Treas. Reg. § 1.884-2T(a)(2)(i)(D) must be executed on Form 8848 on or before the date (including extensions) prescribed for filing the foreign corporation's income tax return for the year of complete termination and extend the period of assessment of the branch profits tax for the year of complete termination to a date not earlier than the close of the sixth taxable year following that taxable year.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the standards set forth in Treas. Reg. § 301.9100-3 to make a regulatory election under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation, a revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-3 provides standards for extensions of time for making regulatory elections when the deadline for making the election is other than a due date prescribed by statute.

Treas. Reg. § 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Based on the facts and circumstances of this case, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a) and is granted an extension of time to file Form 8848. Accordingly, Taxpayer is granted an extension of time until 60 days from the date of this ruling letter to file its Form 8848. Since Taxpayer already filed a Form 8848 on Date 4, Taxpayer should amend the Year A return by attaching a copy of this ruling letter to

such return, or if the Taxpayer files the return electronically, by attaching a statement to the return that provides the date and the control number of this ruling letter.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Elizabeth U. Karzon
Chief, Branch 1
Office of Associate Chief Counsel
(International)